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UNCLAS SECTION 01 OF 03 BRASILIA 001978

SIPDIS

STATE PASS USTR -- YANG  
NSC FOR CRONIN  
AID FOR LAC/SA  
TREASURY FOR OASIA - DAS LEE AND FPARODI  
USDOC FOR 4332/ITA/MAC/WH/OLAC/JANDERSEN/ADRISCOLL/MWAR D  
USDOC FOR 3134/ITA/USCS/OIO/WH/RD/DDEVITO/DANDERSON/EOL SON  
JUSTICE FOR CCIPS  
DHS FOR ICE CYBER CRIMES CENTER

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [IPR](#)

SUBJECT: July 12 U.S.-Brazil IPR Technical Cooperation Meeting

Refs: A) Brasilia 487 (Notal) B) Brasilia 599

1. Summary and Introduction. On July 12, a team from USDOJ's Computer Crime and Intellectual Property Section (CCIPS), the Department of Homeland Security's Immigration and Customs Enforcement (ICE) Unit, and USTR met with counterparts from the Ministry of Justice, Federal Police, Receita Federal and Foreign Ministry for the first meeting under an informal technical cooperation initiative on IPR enforcement. The technical cooperation initiative is a by-product of discussions with the GoB over the last year regarding the possible withdrawal of Brazil's trade benefits under the Generalized System of Preferences (GSP) due to ineffective copyright protection (ref A). On April 4, the GSP Review was extended until September 30, 2005. While the threat of the GSP Review has remained in place, the USG has also sought since April to foster a bilateral exchange between law enforcement and customs agencies specifically to support a timely implementation of Brazil's recently formulated national anti-piracy plan (ref B). End Summary and Introduction.

2. The U.S. delegation was led by Christopher Merriam, International Coordinator for CCIPS and included Jason Gull, a trial attorney with CCIPS; Elizabeth Perino, Section Chief of the ICE Cyber Crimes Center; and Leslie Yang, USTR Director for Mercosul; representatives from AmEmbassy Brasilia Econ, DHS, Legatt, and FCS also attended. Heading up the Brazilian Delegation was Marcio Costa de Menezes e Goncalves, Executive Secretary of Brazil's National Anti-Piracy Council (CNCP). He was joined by Valquiria Teixeira and Adauto Martins of the Federal Police; Mauro Brito, head of a specialized enforcement section within Receita Federal's customs unit; Lilian Pinho, of the Public Prosecutor's office in the state of Rio de Janeiro; and Otavio Brandelli and Joao Storti of the Foreign Ministry.

3. The discussions focused on three subject areas identified during a June 1 bilateral digital video conference: risk analysis relating to customs, cybercrime, and legislative initiatives.

#### Risk Analysis - Customs

4. Brito noted an interest in working with other countries to obtain information that would enhance Brazilian customs' ability to evaluate the risk associated with particular importers and exporters. Yang noted that some countries have set up a registry to identify legitimate importers of blank CDs. Goncalves said the CNCP was considering establishing one central office for registration of copyright titleholders to enable better coordination between right-holders and law enforcement. Brito also said customs would like to work more closely with the United States and other countries to address under-invoicing. The Deputy DHS Attache encouraged Brito to use a bilateral cooperation agreement between Brazilian customs and DHS as a vehicle for seeking information that would be useful in their efforts. It was agreed that the subject of risk analysis would be taken up in greater detail during subsequent discussions.

5. Brito also outlined Receita Federal's customs modernization plan, including plans to improve infrastructure and increase the use of technology, such as scanners and optical character reading cameras, to enhance customs' ability to regulate the entry of products. In March 2005, Brazilian customs established a special coordination unit for inspection oversight, establishing five separate sections to deal with: international trade related duties, enforcement (smuggling), classification of goods, risk analysis, and security. According to Brito, the special enforcement unit is slated to grow from 200 to 1,000 officers within two years, and by the end of three years it should be sufficiently large to deploy throughout the entire country. In addition to using scanners, the unit will have

an aviation team outfitted with planes, helicopters and speedboats. Brazilian customs has also been exploring tax evasion control measures, such as the application of seals or serial numbers for CDs and DVDs, but is still discussing the issue with domestic industry which has not yet supported the approach.

#### Cybercrime

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16. The Brazilian delegation displayed an intense interest in discussing an array of issues related to the protection of intellectual property and the internet. Teixeira of the Federal Police said that although formally a new unit within the Federal Police to combat cybercrime has not been formed, it is functioning in practice and she requested that an informal channel of communication be established between Brazilian and U.S. authorities to enable quick communication for time sensitive inquiries. The U.S. delegation welcomed direct inquiries to CCIPS and ICE from Brazilian authorities, but noted that inquiries directed through either the DHS or Legatt offices at post would probably be the most expeditious approach, particularly given language differences.

17. During the meeting, information was exchanged regarding internet service provider (ISP) liability within the U.S. and Brazilian legal systems, legal processes and mechanisms for securing evidence, difficulties and potential options for determining domain name ownership, and problems with the improper use of trademarks within worldwide web domain names. The Brazilian delegation requested copies of pertinent U.S. legislation for reference as further changes in Brazilian laws are contemplated; they described current legislation as not very advanced.

18. Goncalves explained that Brazilian sellers of illegitimate products over the internet are increasingly acquiring domain names abroad to avoid penalties within Brazil. Merriam noted that a substantial portion of enforcement in the United States is as a result of civil action. The difficulty of monitoring service providers and auction sites for the sale of counterfeit goods was discussed, but the U.S. delegation also pointed out that auction sites are a resource for information useful for law enforcement. In general, the U.S. delegation described the benefits of working in partnership with the large service providers and auction sites, which have a self-interest in denying access to purveyors of pirated goods, and U.S. law enforcement's focus on smaller providers who may be actual collaborators in criminal activity. The U.S. delegation explained that U.S. law distinguishes between an attempt by a domain name holder to extort a trademark owner, which is illegal, and the legal use of trademarks in domain names if for the purpose of education or comparison.

19. Both sides conveyed an interest in continuing the discussion in this area. Merriam encouraged the Brazilian delegation to forward any questions they have in writing in order to keep the dialog going and to increase the productivity of a future meeting.

#### Legislative Initiatives

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110. Brandelli provided an overview of changes to Brazilian IPR law in recent years, including the ability to hold owners of buses used to transport counterfeit goods as liable and the elimination of customs-free transit for blank CDs through Brazil to Paraguay. Another change has enabled a copyright association to be considered an "associated party" within legal proceedings. Pinho claimed that copyright enforcement problems stem not so much from a need to change legislation, but from a lack of consistent application of the existing law. One change being considered to Brazilian law would enable law enforcement to retain only a sample of counterfeit products seized, either destroying or donating the remainder. In response to a question from the Brazilian side, the U.S. delegation explained that by working closely with right-holders, U.S. law enforcement typically is able to determine definitively before seizure that the products are in fact counterfeit. The quantity and monetary damage thresholds of the U.S. criminal copyright law were also explained.

111. Although not directly related to legislation, Pinho described how state level prosecutors have organized to standardize operations, procedures and penalties to address organized crime and her efforts to apply this same model for organizing state prosecutors to combat piracy. Pinho said she is drafting a handbook for use by civil, military, highway, state, and federal police as well as customs agents to explain techniques for recognition, surveillance, and intelligence gathering related to piracy.

#### Next Steps

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¶12. At the conclusion of the meeting, both sides described the discussion as very useful and expressed an interest in continuing the dialog, although no date was set for a future meeting. Post continues to believe that this type of exchange provides the USG with a useful mechanism for engaging the GoB in a productive way on its efforts to combat piracy and to potentially make a positive impact on implementation of the GoB's national anti-piracy action plan.

¶13. This cable was cleared by the U.S. delegation.

Manganiello